

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RICHARD LOOS

Plaintiff,

- against -

COMFORT INNS, INC. and CHOICE HOTELS  
INTERNATIONAL, INC.

Defendants.

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COMFORT INNS, INC. and CHOICE HOTELS  
INTERNATIONAL, INC.

Third-Party Plaintiffs,

- against -

KENNETH WEISS and RONDAVEL MANAGEMENT  
CORPORATION

Third-Party Defendants.

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**THIRD PARTY  
COMPLAINT**

Docket No.: 07-CV-6723 (PKL)

Assigned Judge:  
Hon. Peter K. Leisure

Third-Party  
Docket No.:

Defendant/third-party plaintiff, **CHOICE HOTELS INTERNATIONAL, INC.**

(hereinafter referred to as “**CHOICE**”), by its attorneys, **MARKS, O’NEILL, O’BRIEN & COURTNEY, P.C.**, as and for its Third-Party Complaint, alleges upon information and belief as follows:

1. At all times hereinafter mentioned, defendant/third-party plaintiff, **CHOICE**, was and is a domestic corporation established and existing under the laws of the State of New York and licensed to conduct business within such state.

2. At all times hereinafter mentioned, third-party defendant, RONDAVEL MANAGEMENT CORPORATION (hereinafter referred to as “**RONDAVEL**”), was and is a

domestic corporation established and existing under the laws of the State of New York and licensed to conduct business within such state.

3. At all times hereinafter mentioned, third-party defendant, RONDAVEL, was and is a foreign corporation authorized to conduct business within the State of New York.

4. At all times hereinafter mentioned, third-party defendant, RONDAVEL, was and is a foreign corporation actually conducting business within the State of New York.

5. That defendant KENNETH WEISS assaulted the plaintiff, RICHARD LOOS.

6. At some point in time, prior to June 15, 2007, third-party defendant, RONDAVEL, entered into a written franchise agreement with **CHOICE**.

7. Under such agreement, pursuant to § “14,” the franchisee, RONDAVEL, agrees to defend, indemnify, and hold harmless franchisor, **CHOICE**, its officers, directors, agents and employees from any loss, cost, damage, expense and liability, including reasonable attorneys fees and any court costs, by reason of damage or loss, including personal injury, of whatsoever nature or kind, arising from or connected with the business of the Hotel or any department thereof, or operated in conjunction therewith, or out of, or as a result of, any error, omission, act or failure on the part of the franchisee, its agents or employees.

**AS AND FOR A FIRST CAUSE OF  
ACTION AGAINST KENNETH WEISS**

8. Defendant/third-party plaintiff, **CHOICE**, repeats, reiterates and realleges the allegations contained in paragraphs “1” through “7” as though fully set forth herein.

9. If plaintiff, RICHARD LOOS, was caused to or sustained injuries and/or damages as alleged in his complaint due to any culpability other than his own, and if such injuries or damages are attributable, in whole or in part, to defendant/third-party plaintiff, **CHOICE**, which is hereby denied by defendant/third-party plaintiff, **CHOICE**, then such injuries, damages or both were sustained by reason of the primary and active carelessness, recklessness, negligence and/or affirmative acts of third-party defendant, KENNETH WEISS, without any negligence or fault of the defendant/third-party plaintiff, **CHOICE**, contributing thereto.

10. By reason of the foregoing, and under the principles of common law indemnification, third-party defendant, KENNETH WEISS, is obligated to indemnify defendant/third-party plaintiff, **CHOICE**, by reason of the occurrence described in plaintiff's complaint, or, in the alternative, for such portion of any judgment as the relative responsibilities may warrant, and defendant/third-party plaintiff, **CHOICE**, is entitled to have judgment over and against third-party defendant, KENNETH WEISS, for all or part of any verdict or judgment which may be recovered against defendant/third-party plaintiff, **CHOICE**, in this action.

11. As a result of the negligence, gross negligence, or some combination thereof, of third-party defendant, KENNETH WEISS, defendant/third-party plaintiff, **CHOICE**, has incurred and will continue to incur liability for costs, disbursements and counsel fees in defending this suit and has incurred and will continue to incur other damages and expenses in connection therewith, all to their special damages and third-party defendant, KENNETH WEISS, will be bound to indemnify defendant/third-party plaintiff, **CHOICE**, for any and all legal and other costs, disbursements and expenses.

**AS AND FOR A SECOND CAUSE OF  
ACTION AGAINST RONDAVEL MANAGEMENT CORP.**

12. Defendant/third-party plaintiff, **CHOICE**, repeats, reiterates and realleges the allegations contained in paragraphs "1" through "11" as though fully set forth herein.

13. If plaintiff, RICHARD LOOS, was caused to or sustained injuries and/or damages as alleged in his complaint due to any culpability other than his own, and if such injuries or damages are attributable, in whole or in part, to defendant/third-party plaintiff, **CHOICE**, which is hereby denied by defendant/third-party plaintiff, **CHOICE**, then such injuries, damages or both were sustained by reason of the primary and active carelessness, recklessness, negligence and/or affirmative acts or omission or commission and/or breach of contract, and/or breach of warranty, and/or gross negligence, and/or breach or violation of statute of third-party defendant, RONDAVEL, without any negligence or fault of the defendant/third-party plaintiff, **CHOICE**, contributing thereto.

14. By reason of the foregoing, and under the principles of contribution, common law and contractual indemnification, third-party defendant, RONDAVEL, is obligated to indemnify defendant/third-party plaintiff, **CHOICE**, by reason of the occurrence described in plaintiff's complaint, or, in the alternative, for such portion of any judgment as the relative responsibilities may warrant, and defendant/third-party plaintiff, **CHOICE**, is entitled to have judgment over and against third-party defendant, RONDAVEL, for all or part of any verdict or judgment which may be recovered against defendant/third-party plaintiff, **CHOICE**, in this action.

15. As a result of the negligence, breach of contract, breach of warranty, breach of statute, gross negligence, or some combination thereof, of third-party defendant, RONDAVEL, defendant/third-party plaintiff, **CHOICE**, has incurred and will continue to incur liability for

costs, disbursements and counsel fees in defending this suit and has incurred and will continue to incur other damages and expenses in connection therewith, all to their special damages and third-party defendant, RONDAVEL, will be bound to indemnify defendant/third-party plaintiff, **CHOICE**, for any and all legal and other costs, disbursements and expenses.

**WHEREFORE**, defendant/third-party plaintiff, **CHOICE**, demands judgment:

- (a) Dismissing the complaint of plaintiff as to defendant/third-party plaintiff, **CHOICE**, together with costs and disbursements; and
- (b) On the first cause of action, defendant/third-party plaintiff, **CHOICE**, demands judgment over and against third-party defendant, KENNETH WEISS, for all or that portion of any verdict or judgment which shall or may be obtained herein against defendant/third-party plaintiff, **CHOICE**, and in accordance with principles of common law indemnity and contribution, defendant/third-party plaintiff, **CHOICE**, demands that the ultimate rights of the parties herein be determined in this action; and
- (c) On the first cause of action, and in accordance with principles of common law indemnity, defendant/third-party plaintiff, **CHOICE**, demands judgment over and against third-party defendant, KENNETH WEISS, in the full amount of any verdict or judgment which shall or may be obtained herein against defendant/third-party plaintiff, **CHOICE**, together with defendant/third-party plaintiff's, **CHOICE**, costs and expenses incurred in this third-party action; and
- (d) On the second cause of action, defendant/third-party plaintiff, **CHOICE**, demands judgment over and against third-party defendant, RONDAVEL, for all or that portion of any verdict or judgment which shall or may be obtained herein against defendant/third-party plaintiff, **CHOICE**, and in accordance with principles of contractual and/or common law indemnity and contribution, defendant/third-party plaintiff, **CHOICE**, demands that the ultimate rights of the parties herein be determined in this action; and
- (e) On the second cause of action, and in accordance with principles of contractual and/or common law indemnity and/or breach of contract, defendant/third-party plaintiff, **CHOICE**, demands judgment over and against third-party defendant, RONDAVEL in the full amount of any verdict or judgment which shall or may be obtained herein against defendant/third-party plaintiff, **CHOICE**, together with defendant/third-party plaintiff's, **CHOICE**, costs and expenses incurred in this third-party action; and

(f) Defendant/third-party plaintiff, **CHOICE**, be granted such other and further relief as this Court may deem just and proper.

Dated: Elmsford, New York  
November 1, 2007

By: \_\_\_\_\_  
James M. Skelly (4844)

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Third-Party Plaintiff  
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File No. 308.79853

TO:

**KENNETH WEISS**  
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**RONDABEL MANAGEMENT CORP.**  
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